RECEIVED
NOV 22 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

No. 82-494

BATH IRON WORKS CORPORATION,

and

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,

Petitioners

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

and

DONALD J. SIMPSON,

Respondents

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Now comes the Respondent, Donald J. Simpson, by and through his undersigned attorney and asks leave of this Honorable Court to proceed in forma pauperis should Petitioners, Bath Iron Works Corporation be granted a writ of certiorari to the United States Court of Appeals for the First Circuit. Respondent's Affidavit in support of this motion is attached hereto.

Dated: November 19, 1982

McTEAGUE, HIGBEE, LIBNER, REITMAN & PRIEST

By: _____
Jonathan W. Reitman, Esq.
Attorney for Respondent Donald J. Simpson

RECEIVED
NOV 22 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

NO. 82-494

BATH IRON WORKS CORPORATION, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, Petitioners	:	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS
v.	:	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, and DONALD J. SIMPSON, Respondents	:	

I, DONALD J. SIMPSON, being duly sworn, depose and say: this Affidavit is being executed for use in support of a Motion for Leave to Proceed in forma pauperis in the Supreme Court of the United States in a proceeding in which I am the Respondent. The proceeding involves an action instituted by me in a claim for benefits under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §901 et. seq. The Administrative Law Judge below initially denied the claim. I appealed that denial to the Benefits Review Board which affirmed the dismissal of the claim, although its decision was based on a rationale different from that of the Administrative Law Judge. The Benefits Review Board held that the Supreme Court's decision in Calbeck v. Travelers Insurance Company, 370 U. S. 114 (1962), which extended the jurisdictional scope of the Longshoremen & Harbor Workers' Compensation Act,

could not be appealed retroactively so as to bring this action within the jurisdiction of the Longshoremen & Harbor Workers' Compensation Act.

The United States Court of Appeals for the First Circuit, CA#81-1455 vacated the decision of the Benefits Review Board holding that Calbeck should govern all decisions under the Longshoremen's Act of 1927.

Petitioners seek this Court's Review, by Petition for Certiorari, of the action taken by the Court of Appeals in vacating the Benefits Review Board's dismissal of my claim.

As a result of my injuries, I am a paraplegic, and my income is very small. I am unable to pay the fees and costs of this proceeding, or to give security therefor and still be able to provide myself with the necessities of life. I ask leave, therefore, to proceed in forma pauperis.

Dated: November 19, 1982

Donald J. Simpson

Donald J. Simpson

STATE OF MAINE
CUMBERLAND, SS. DATED: 11/19/82

Personally appeared the above named Donald J. Simpson and made oath that the foregoing Affidavit is true and correct to the best of his knowledge and belief.

Before me,

Anita C. Mercer

Notary Public

RECEIVED
NOV 22 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

CERTIFICATE OF SERVICE

1. My name is Jonathan W. Reitman, Esq.; I am an attorney authorized to practice law in the State of Maine, and a member in good standing of the bar of the United States Supreme Court.

2. I hereby certify and state, pursuant to Rule 24(a) of the Rules of the Supreme Court of the United States, that the Motion for Leave to Proceed In Forma Pauperis with attached Affidavit in the matter of Bath Iron Works Corporation and American Mutual Liability Insurance Company, Petitioners, v. Director, OWCP, U. S. Department of Labor, and Donald J. Simpson, Respondents was, to my personal knowledge, filed by said Respondent on November 19, 1982, in accordance with Rule 25(d), by depositing one (1) copy of the said Motion and supporting Affidavit in the United States Post Office in Brunswick, Maine, with first class postage, pre-paid, certified, properly addressed to the Clerk of the United States Supreme Court, on November 19, 1982.

3. I also certify and state that one (1) copy of said Motion and supporting Affidavit was served on each of the Petitioners in this matter and to the Court of Appeals for the First Circuit, by depositing one (1) copy in the United States Post Office in Brunswick, Maine, on November 19, 1982, with first class postage, pre-paid, certified, properly addressed to the following individuals:

a) Bath Iron Works Corporation and American Mutual Liability Insurance Company, by mailing one (1) copy to counsel of record:
Stephen Hessert, Esq.
Norman & Hanson, P. O. Box 4600 DTS
Portland, Maine 04112

Thomas F. Monaghan, Esq.
Monaghan & Leahy, 95 Exchange Street,
Portland, Maine 04101

b) Court of Appeals for the First Circuit, by mailing one (1) copy to Dana Gallup, Clerk, 1606 John W. McCormack Post Office and Courthouse, Boston, MA 02109

c) Director, OWCP, U. S. Department of Labor, by mailing one (1) copy to the Office of the Associate Solicitor, Frances Perkins Building 200 Constitution Avenue, N.W. Suite N-2716, NDOL, Washington, D.C. 20210; and

d) One (1) copy to Solicitor General Department of Justice, Washington, D.C. 20530

as is required by Rule 25(d).

Dated: November 19, 1982

Jonathan W. Reitman, Esq.

STATE OF MAINE
CUMBERLAND, SS.

Dated: 11/19/82

Personally appeared the above-named Jonathan W. Reitman and made oath that the foregoing Certificate of Service is true and correct to the best of his knowledge and belief.

Before me,

Notary Public

192 Dec 18 Cert

IN THE SUPREME COURT OF THE UNITED STATES

No. 82-494

RECEIVED
NOV 27 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BATH IRON WORKS CORPORATION, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, Petitioners v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, and DONALD J. SIMPSON, Respondents	MOTION OF RESPONDENT, DONALD J. SIMPSON, RELATING TO PETITION FOR CERTIORARI FILED BY PETITIONERS, BATH IRON WORKS AND AMERICAN MUTUAL INSURANCE COMPANY

NOW COMES the Respondent, Donald J. Simpson, by and through his undersigned counsel, and states as follows:

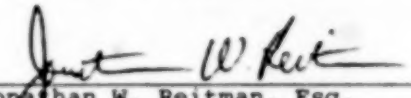
1. On September 20, 1982, the Petitioners in the above-captioned case petitioned this Honorable Court for a Writ of Certiorari from the decision of the First Circuit Court of Appeals. The Respondent acknowledges that the decision of the First Circuit Court of Appeals involves substantial federal questions, including but not limited to the interpretation to be given to the decision of this Court in Calbeck v. Travelers Insurance Company, 370 U. S. 114 (1962). In addition, this case involves significant questions of retroactivity, general maritime law, and interpretations to be accorded the Longshoremen & Harbor Workers' Compensation Act, 33 U.S.C. §901 et. seq.

2. On the other hand, the case appears to be one of limited applicability. The U.S. Department of Labor has indicated in the record below that there is no reason to believe that there would be any flood of litigation if the decision of the First Circuit Court of Appeals is allowed to stand. Upon information and belief, it is respectfully suggested that there are an extremely limited number of cases to which the factual pattern involved in this case at bar would apply.

WHEREFORE, the Respondent, Donald J. Simpson, takes no position in favor or in opposition to the Petition for Certiorari filed by the Petitioner. However, should this Honorable Court choose to grant certiorari in this matter, the Respondent, Donald J. Simpson, asks leave as requested in a previously filed motion, to proceed in forma pauperis for the reasons set forth in that motion and affidavit.

Dated: November 24, 1982

Respectfully submitted,



Jonathan W. Reitman, Esq.
Attorney for Respondent, Donald J. Simpson

CERTIFICATE OF SERVICE

1. My name is Jonathan W. Reitman, Esq.; I am an attorney authorized to practice law in the State of Maine, and a member in good standing of the bar of the United States Supreme Court.

2. I hereby certify and state that the Motion of Respondent, Donald J. Simpson, Relating to Petition for Certiorari Filed by Petitioners, Bath Iron Works and American Mutual Insurance Company in the matter of Bath Iron Works Corporation and American Mutual Liability Insurance Company, Petitioners, v. Director, OWCP, U. S. Department of Labor, and Donald J. Simpson, Respondents was, to my personal knowledge, filed by said Respondent on November 24, 1982, in accordance with Rule 25(d), by depositing one (1) copy of the said Motion in the United States Post Office in Brunswick, Maine, with first class postage, prepaid, certified, properly addressed to the Clerk of the United States Supreme Court, on November 24, 1982.

3. I also certify and state that one (1) copy of said Motion was served on each of the Petitioners in this matter and to the Court of Appeals for the First Circuit, by depositing one (1) copy in the United States Post Office in Brunswick, Maine, on November 24, 1982, with first class postage, prepaid, properly addressed to the following individuals:

a) Bath Iron Works Corporation and American Mutual Liability Insurance Company, by mailing one (1) copy to counsel of record:
Stephen Hessert, Esq.
Norman & Hanson, P. O. Box 4600 DTS
Portland, Maine 04112

Thomas F. Monaghan, Esq.
Monaghan & Leahy, 95 Exchange Street,
Portland, Maine 04101

b) Court of Appeals for the First Circuit, by mailing one (1) copy to Dana Gallup, Clerk, 1606 John W. McCormack Post Office and Courthouse, Room 409 Boston, MA 02109

c) Director, OWCP, U. S. Department of Labor, by mailing one (1) copy to the Office of the Associate Solicitor, Frances Perkins Building 200 Constitution Avenue, N.W. Suite N-2716, NDOL, Washington, D.C. 20210; and

d) One (1) copy to Solicitor General Department of Justice, Washington, D.C. 20530

as is required by Rule 25(d).

Dated: November 24, 1982

Jonathan W. Reitman, Esq.

STATE OF MAINE
CUMBERLAND, SS. November 24, 1982

Personally appeared the above-named Jonathan W. Reitman and made oath that the foregoing Certificate of Service is true and correct to the best of his knowledge and belief.

Before me,

Notary Public

My commission expires 4/3/88